



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: DECEMBER 22, 2022

IN THE MATTER OF:

Appeal Board No. 625263

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed August 12, 2022 (), the Administrative Law Judge sustained, effective March 6, 2021, the employer's objection and overruled the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted by the claimant.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked for the employer herein as a full-time custodian for four years until March 5, 2021. After March 5, 2021, she was on an authorized leave of absence from work for three weeks because she contracted COVID-19. While still on leave, two of her supervisors (OR and SM) telephoned her on the same call. OR told her to return to work while on leave or she would be fired. The claimant told him that she was not ready to return to work. SM told the claimant to apply for unemployment insurance. The claimant did not return to work. But for SM's statement, the claimant would

have returned to work after her leave of absence.

OPINION: The credible evidence establishes that the claimant did not voluntarily leave her employment. Rather, she was discharged after she informed her supervisors that she was not ready to return to work while on an authorized leave of absence. The claimant had no intention of quitting and would have returned to work after her leave of absence ended. While the employer witness, FS, testified that the claimant told him that she did want to return to work, the conversation occurred in April 2021 after the claimant had already been discharged. As the claimant was discharged by the employer and did not voluntarily leave her employment, we conclude that her separation from employment ended under nonqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause, is overruled.

The initial determination, holding the claimant eligible to receive benefits, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER